

202

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(Through video conferencing)

CRM-M No.27276 of 2019
Date of Decision: 03.09.2021

SHUBHAM AND ANR

.....Petitioners

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mohan Singh Chauhan, Advocate
for the petitioners.

Mr. Anant Kataria, D.A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners seek grant of anticipatory bail in case bearing FIR No.0321 dated 17.06.2019 registered under Sections 186/332/353/379-A IPC at Police Station Ambala Cantt.

[2]. Vide order 26.06.2019, notice of motion was issued and it was directed that no coercive steps shall be taken against the petitioners in the present FIR. Learned counsel for the petitioners contended before the Court that in view of CCTV footages appended by the petitioners vide Pen Drive of the incident, the allegations of the FIR are found to be totally

baseless as none of the petitioners came in physical contact of the complainant/Constable Dharmbir Singh whose version has been converted into an FIR.

[3]. Thereafter vide different orders, the case was adjourned. Vide order dated 24.07.2019, the Superintendent of Police, Ambala was directed to examine the footage provided by the petitioners and also to file his affidavit in this regard.

[4]. On 05.08.2019, following order was passed by the Co-ordinate Bench of this Court:-

“Pursuant to the order dated 24.07.2019, ASI Jasvinder Singh, from Police Station Ambala Cantt., District Ambala, has appeared and has filed an affidavit of Sh. Abhishek Jorwal, the Superintendent of Police, Ambala, (dated today itself, i.e. 05.08.2019).

As per the said affidavit, the Superintendent of Police examined the CCTV/video footage supplied to him by petitioner no. 2, and found that a police party in a PCR/'Gypsy' reached the place of occurrence for taking the accused “who had already been arrested” in a Gambling case by another police party of the same police station, i.e. Police Station Ambala Cantt. I

It is thereafter stated that “when the accused already arrested” were taken into the police vehicle, some other persons seemed to have come to the side of the driver of the said vehicle and many people gathered there, after which an altercation took place between the police officials and those persons.

Thereafter, the police party left the place in the

vehicle along with the accused arrested in the Gambling case.

As per the Superintendent of Police, the CCTV footage was captured from a distance and the quality of the video was very poor, with the persons who had gathered around the 'Gypsy' not recognizable and the incident also not "properly captured" as "it was held at the right side of the 'Gypsy' near the driver seat".

The Superintendent of Police further goes on to state that the actual incident would have to be explained by the witnesses present.

Lastly, it has been stated that as per record the petitioners are "hardcore criminals" with 06 FIRs registered against petitioner no. 2, ranging from offences punishable under Sections 302 and 307 of the IPC, as also under Section 13 of the Gambling Act.

As regards petitioner no. 1, two FIRs stand registered, one alleging therein the commission of offences punishable under Section 307 etc. of the IPC, and one under Section 13 of the Gambling Act.

It has finally been stated in the affidavit that the petition seeking anticipatory bail be dismissed.

It is to be noticed that none having appeared in this case, as the Bar is still abstaining from work, the affidavit was given to me when I was in Chambers by the Reader of this Court, upon which the aforesaid official has been called to Chambers.

Upon query to the ASI, he has submitted that what is meant in the affidavit is to the effect that it was not the petitioners who had been "already arrested" at the time when the police party went to the spot, but some other

persons were to be taken from the spot (who were named in a gambling case).

Adjourned to 13.08.2019, with the Superintendent of Police, Ambala, to file another affidavit stating as to why, when somebody was “already arrested in a Gambling case”, the police party had to go and arrest them again at the same spot.

Without making any comment on the actual merits of the case in the absence of any counsel, the interim order would continue to enure till the next date of hearing.

It is made clear that if the affidavit is not filed, the SP shall remain personally present in Court on the next date of hearing itself.”

August 05, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE”

[5]. On 12.09.2019 after perusal of contents of Pen Drive, following order was passed by the Co-ordinate Bench:-

“Having perused the contents of the pen drive annexed as Annexure P-2 with the petition, apparently at least there does not seem to be any police officer being pulled out of the vehicle, contrary to what is stated in the FIR. Any mobile phone being snatched from the hands of a police officer will be pointed to by learned State counsel upon him personally perusing the contents of the pen drive and pointing to this Court any incident of such mobile phone snatching, as also with regard to any police official being pulled out of the vehicle.

In the meanwhile, in view of what has been stated in the first part of this order, the petitioners would not be arrested till the next date of hearing.

Adjourned to 31.10.2019.

September 12, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE”

[6]. On 31.10.2019, the Co-ordinate Bench observed in the following manner:-

“Constable Dharambir Singh on whose statement the FIR is shown to have been registered and who has stated that “two young boys come there and stopped the vehicle and took away the key of vehicle and one of the boy caught hold me from neck and forced me to come out and manhandled me”, will remain present in Court on the next date of hearing and answer as to why this Court should not direct action to be taken against him for, prima facie at least, making a false statement in the FIR.

Adjourned to 20.11.2019.

Interim order to continue, till the next date of hearing.

A copy of this order be given to learned State counsel under the signatures of the Bench Secretary of this Court.”

October 31, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE”

[7]. When the matter was again listed on 02.12.2019 before the Co-ordinate Bench, it was observed that Constable Dharambir Singh was present in Court and he reiterated his version as regards two boys having come and stopped the vehicle and took away the keys of the vehicle. One of them caught him from the neck and forced him to come out of the

vehicle. As per affidavit filed by the SP, Ambala, the CCTV footages were captured from a distance and were of poor quality. The identify of the persons gathered by the side of the driver of the Gypsy could not be established and the time of incident could not be captured. The contention of the SP was not found to be wholly correct because though the video may have been taken from little distance, the occurrence itself, except on the far side of the Gypsy is quite amply visible in the footage.

[8]. After recording the aforesaid observations, the Superintendent of Police was again directed to look into the video in the presence of the Constable-Dharambir Singh and thereafter file an affidavit. The Court has observed the aforesaid facts after seeing the video itself.

[9]. Thereafter vide order dated 23.01.2020, affidavit of Abhishek Jorwal, IPS, Superintendent of Police, Ambala was filed and the same was taken on record. The petitioners were directed to join the investigation.

[10]. Today, learned State counsel submits that though the petitioners have joined the investigation, but they have not co-operated in facilitating recovery of mobile phone which was allegedly snatched from the ASI.

[11]. In view of affidavit filed by the Superintendent of Police, Ambala, make and model of the said mobile phone have not

come forth establishing the identity of the mobile phone in any manner.

[12]. In view of aforesaid facts and circumstances, the interim order dated 23.01.2020 is made absolute. However, the petitioners shall keep on joining the investigation as and when required to do so and they shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

[13]. Petition stands disposed of.

September 03, 2021
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No